

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ANGEL M. ORTIZ-DE JESUS

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 16-2488 (ADC)
[Related to Crim. No. 15-124-3 (ADC)]

OPINION AND ORDER

Petitioner's motion to vacate, set aside or correct sentence, **ECF No. 1**, is hereby **DISMISSED WITH PREJUDICE**. Petitioner pleaded guilty to one charge, conspiracy to possess with the intent to distribute at least 3.5 kilograms, but less than 5 kilograms, of cocaine within 1,000 feet of a protected location, pursuant to 21 U.S.C. § 841(b)(1)(B). **Crim. No. 15-124, ECF No. 696**. Petitioner first seeks relief under *Johnson v. United States*, 135 S.Ct. 2551 (2015), which addresses the "crime of violence" provisions of the Armed Career Criminal Act ("ACCA") in 18 U.S.C. § 924(e)(2)(B). The presentence report (PSR) recommended petitioner be sentenced as a career offender pursuant to United States Sentencing Guideline § 4B1.1, not under the ACCA. **Crim. No. 15-124, ECF No. 547** at 16. Therefore, *Johnson* is not implicated. Additionally, petitioner's argument that he did not join the conspiracy until August or September of 2011, thereby absolving him of responsibility for any *heroin* involved in the conspiracy during that

time, is also irrelevant. ECF No. 1 at 5–6. Last, petitioner’s statute of limitations and associated ineffective assistance of counsel arguments are unavailing. *Id.* at 7. The indictment alleges a conspiracy that began “in or about 2010, and continuing up to and until the return of the instant indictment.” **Crim. No. 15-124, ECF No. 1** at 3–4. There is no statute of limitations problem and, as a result, counsel was not ineffective for failing to raise an irrelevant matter.

In conclusion, the motion at **ECF No. 5** by the Federal Public Defender to withdraw, is **GRANTED**. The petition at **ECF No. 1** is **DISMISSED WITH PREJUDICE**. The Clerk of Court is to enter judgment accordingly.

SO ORDERED.

At San Juan, Puerto Rico, on this 23th day of August, 2018.

S/AIDA M. DELGADO-COLÓN
United States District Judge